

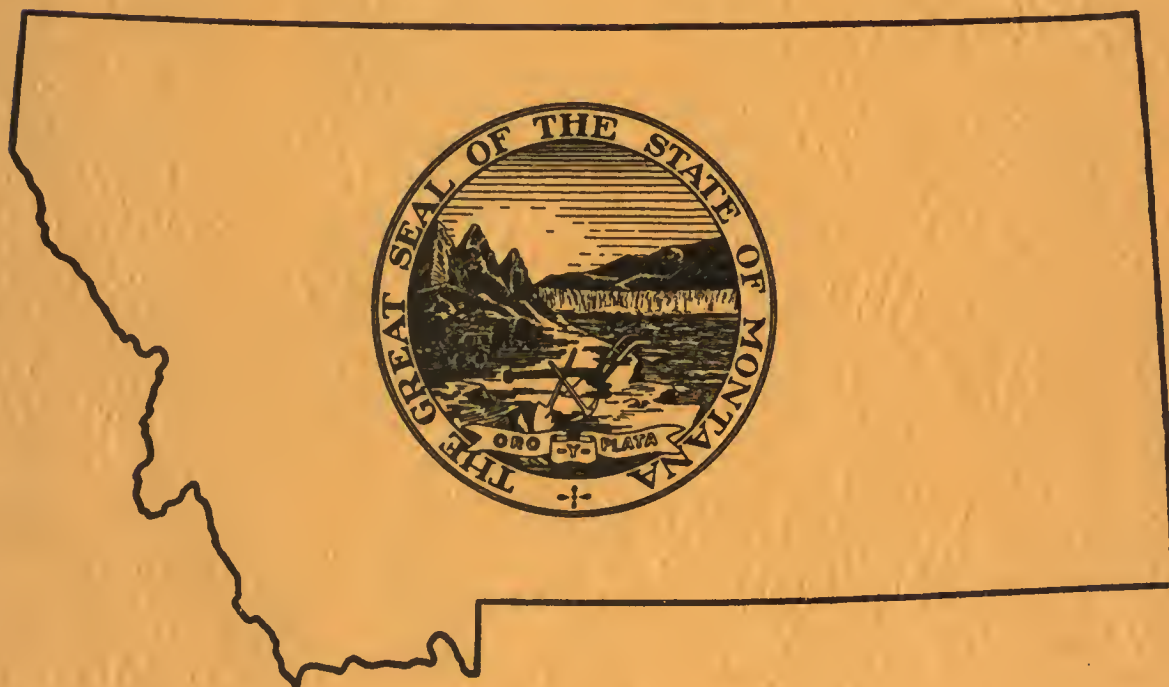
Montana State Library

This cover sheet created by Internet Archive for formatting.

S
328.3
LIBr36
1970
C.2

STATE DOCUMENTS

Board of Railroad Commissioners
Ex Officio
Public Service Commission of Montana



Montana Legislative Council

December, 1970

Report No. 36

MONTANA STATE LIBRARY

S 328.3 L13r36 c.2

Board of Railroad Commissioners, exoffic



3 0864 00002697 4

BOARD OF RAILROAD COMMISSIONERS
EX OFFICIO
PUBLIC SERVICE COMMISSION OF MONTANA

A REPORT TO THE FORTY-SECOND
LEGISLATIVE ASSEMBLY

by the

MONTANA LEGISLATIVE COUNCIL

December 1970

To Members of the Forty-Second Legislative Assembly:

Senate Joint Resolution No. 2 asks two questions: Are the rate-making practices of this state up-to-date? How does Montana compare with other states? It also asks that the study include comparative data on rate-making in other states.

The responsibilities of the Railroad and Public Service Commission are many and varied, making an in-depth examination difficult at best. You will note from the enclosed report that the Subcommittee narrowed its field of interest principally to the sensitive area of the regulation of power-generating utilities. The fact that it is a "sensitive" and controversial area accounts for the fact that little unanimity of thought existed in the Subcommittee, and the Legislative Council felt obliged to submit the Subcommittee report to you "without recommendation."

The undersigned is disappointed in the enclosed effort inasmuch as the Subcommittee's conclusions appear to be based on personal opinions without documentation.

Respectfully submitted,

*SENATOR FRANK W. HAZELBAKER
Chairman
Montana Legislative Council*

MONTANA LEGISLATIVE COUNCIL

1969 - 1970

SENATE MEMBERS

Frank W. Hazelbaker, Chairman
LeRoy Anderson, Secretary
Mills Folsom
David F. James
P. J. Keenan
Herbert J. Klindt

HOUSE MEMBERS

Francis Bardanouve, Vice Chairman
Matt A. Hims1
Harold McGrath
Miles Romney
Scott B. Stratton
Hubert E. Woodard

Executive Director: James W. Van Koten
State Capitol, Helena

SUBCOMMITTEES

ADMINISTRATIVE PROCEDURES

Senator Mills Folsom, Chairman
Representative Lester H. Loble, II
Senator Jean A. Turnage
Representative Ray J. Wayrynen

INCOME TAXATION

Senator LeRoy Anderson, Chairman
Senator Archie M. Cochrane
Representative Larry W. Fasbender
Representative Paul K. Harlow
Senator John J. Lyon
Representative Harold McGrath
Senator Joseph B. Reber
Senator Glen T. Rugg

LOCAL GOVERNMENT

Senator P. J. Keenan, Chairman
Senator G. W. Deschamps
Representative Jeffrey J. Scott
Representative John W. Steele
Senator Stanley G. Stephens
Representative Scott B. Stratton
Representative Hershel M. Robbins
Representative William H. Zimmer

PESTICIDES

Representative Hubert E. Woodard, Chairman
Senator W. F. Bennett
Senator Carroll A. Graham
Representative Nels Hemstad
Senator Harry B. Mitchell
Representative Albert C. Newby
Representative Leland Schoonover
Senator Tom A. Selstad

PROPERTY TAXATION

Representative Matt A. Hims1,
Chairman
Representative J. O. Asbjornson
Senator Ben S. Brownfield
Representative James H. Burnett
Senator P. J. Gilfeather
Senator Stanley R. Nees
Representative William E. Spahr
Representative Robert D. Watt

RAILROAD COMMISSION

Senator Herbert J. Klindt, Chairman
Senator Gordon E. Bollinger
Representative Robert E. Glennen
Representative B. J. Jordan
Representative Robert L. Marks
Senator Joseph B. Reber
Representative Miles Romney
Senator John C. Sheehy

SCHOOL LAWS

Senator David F. James, Chairman
Representative Joe W. Brand
Representative William R. Campbell
Senator William L. Mathers
Representative I. M. Nyquist
Senator Antoinette F. Rosell
Representative William Warfield, IV

VIETNAM BONUS

Representative Harold McGrath,
Chairman
Senator Mills Folsom
Representative Scott B. Stratton

WATER DEVELOPMENT AND SELF-INSURANCE

Representative Francis Bardanouve, Chairman
Representative Vic East
Representative G. C. Feda
Representative Allen C. Kolstad
Senator Dave M. Manning
Senator Gordon McGowan
Senator Edward N. Sparks
Senator C. R. Thiessen

TABLE OF CONTENTS

Transmittal Letter	i
List of Legislative Council Subcommittees	ii
List of Tables	iv
Senate Joint Resolution No. 2	v
 CHAPTER I: INTRODUCTION	 1
 CHAPTER II: PRESENT PROVISIONS IN THE STATUTES	
Creation of Public Service Commission	3
Railroad Commissioners	3
Powers of the Railroad Commission	3
"Public Utility" Defined	3
Duties and Responsibilities of Public Utilities	4
Duties and Responsibilities of Railroad Commission	4
 CHAPTER III: METHODOLOGY OF THE STUDY	
General	7
Montana-Dakota Utility Hearings	7
Public Utility Hearing	8
Pipelines	8
Motor Transportation	8
Railroads	9
Assessments of Railroads - Statement by Mr. Vern Miller . .	9
 CHAPTER IV: COMPARISON WITH OTHER STATES	
Term and Compensation of Commissioners	13
Present Staff and Work Load	15
Rate-Making Procedures in Other States	15
 CHAPTER V: FURTHER FINDINGS	
Utility Review	19
Montana Railroad Commission Review	19
Rate-Making Review	20
 CHAPTER VI: CONCLUSIONS AND RECOMMENDATIONS	 23
 CHAPTER VII: EXPLANATORY FINDINGS AND COMMENTS	
Legislative Interest Review	25
Further Study	26
Summary	26

LIST OF TABLES

TABLE 1	Term and Compensation of Commissioners, All States	14
TABLE 2	Montana Utility Valuations, Provided by Public Service Commission	16
TABLE 3	1969 Assessed Values, Including Gas and Electric Values, Provided by Montana Board of Equalization	17
TABLE 4	Regulatory Functions of State Public Utility Commissions	18

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL STUDY THE RAILROAD COMMISSION, EX OFFICIO THE PUBLIC SERVICE COMMISSION, AND SUBMIT A WRITTEN REPORT TO THE FORTY-SECOND LEGISLATIVE ASSEMBLY.

WHEREAS, the legislature established the railroad commission in 1907; and

WHEREAS, the legislature established the public utilities commission in 1913 and declared the board of railroad commissioners to be ex officio the public service commission; and

WHEREAS, the railroad commission, ex officio public service commission, has not been reviewed extensively by the legislative assembly for a long span of years; and

WHEREAS, the legislative assembly should ever be on the alert to provide reorganized forms of government more capable of meeting changing conditions; and

WHEREAS, it would be in the public interest of the people of the state of Montana to know if the rate-making practices of this state are up-to-date and how Montana compares with other states.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative council is requested to conduct a study of the organization, procedures, and operation of the railroad commission, ex officio public service commission, in this state and to include comparative data on rate making in other states.

BE IT FURTHER RESOLVED, that the legislative council is requested to submit a written report of its findings, together with recommendations and implementing legislation, if necessary, to the forty-second legislative assembly.

BE IT FURTHER RESOLVED, that the board of railroad commissioners, ex officio public service commission, provide the legislative council with any information and assistance necessary to complete this study.

BE IT FURTHER RESOLVED, that the secretary of state is instructed to send copies of this resolution to the board of railroad commissioners and to the executive director of the legislative council.

CHAPTER I

INTRODUCTION

Senate Joint Resolution No. 2 charged the Legislative Council with instituting a study of the Montana Railroad and Public Service Commission investigating the various facets of the commission's functions in all aspects with the aim of ascertaining what, if any, improvements might be possible, and to make a report of the findings resulting from the study to the Forty-Second Legislative Assembly, together with recommendations and suggestions of implementing legislation to perfect the operations of the commission.

In compliance with these instructions, the Legislative Council formed a subcommittee to make the study ordered. The subcommittee, during the interim between the 41st and 42nd legislative sessions, has assiduously studied the commission's operations in their numerous ramifications, as deeply as the time and funds afforded the subcommittee permitted. Herewith the subcommittee reports to the Legislative Council its modus operandi and conclusions.

During the period of investigation, following organization of the subcommittee, that committee determined the methods which it would follow in making the study. These included several conferences with members of the Railroad and Public Service Commission and with its staff, so that the committee could familiarize itself with the viewpoint and methods of the commission. The commission and its staff were most cooperative, affording all data sought by the subcommittee.

The subcommittee also held hearings in the House Chambers at which representatives of the utilities operating in Montana, the transportation operators of the Treasure State, and oil-carrying pipelines of the state, as well as others operating under the jurisdiction of the commission, appeared and testified.

Almost all of those under regulation of the commission provided glowing testimony of the commission's operations. There was a consensus that the commission failed to possess adequate funds for proper operation. The main fault found was that the commission took too long after a rate hearing to make its decision.

At the outset, the subcommittee is for strong utilities to furnish real services to the citizens of Montana. But we feel that the citizens' rights, the rights to be informed and the rights to be heard, should be granted in all utility hearings.

The utilities have the finances, the personnel and the time to prepare rate increase requests while the consumer is limited in all these matters in preparing any opposition to rate increases.

CHAPTER II
PRESENT PROVISIONS IN THE STATUTES
(TITLE 70, R.C.M., 1947)

Creation of Public Service Commission

The Public Service Commission was created in 1913 by the enactment of Section 70-101, Revised Codes of Montana, 1947. The duty of the Public Service Commission as set forth in the above statute is "to supervise and regulate the operations of the public utilities hereinafter named, such supervision and regulation to be in conformity with this act."

Railroad Commissioners

As set forth in Section 70-102, Revised Codes of Montana, 1947, "The board of railroad commissioners of the state of Montana shall be ex officio the public service commission hereby created, and for the purposes of this act shall be known and styled 'Public Service Commission of Montana' . . . in the name as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the railroad commission of Montana shall act as secretary of the commission hereby created, but the business of the public service commission shall be kept entirely separate from that of the railroad commission."

Powers of the Railroad Commission

Section 70-104 provides that the commission "shall have power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; provided, that nothing in this act shall be construed as vesting judicial powers on said commission, or as denying to any person, firm, association, corporation, municipality, county, town, or village the right to test, in a court of competent jurisdiction, the legality or reasonableness of any fixed order made by the commission in the exercise of its duties or powers."

Under Section 1, Article IV of the Constitution, prohibiting either one of the three departments of the state government from exercising any of the powers properly belonging to either of the others, the legislature cannot, through the medium of the public service commission, exercise judicial powers.

"Public Utility" Defined

"The term 'public utility', within the meaning of this act, shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, or any part of a plant or equipment, within the state, for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, street-railway service, light, power in any form or by any agency, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns and villages, or elsewhere, telegraph or telephone service; and the public service commission is hereby invested with full power of supervision, regulation, and control of such utilities, subject to the provisions of this act, and to the exclusion of the jurisdiction, regulation, and control of such utilities by any municipality, town, or village."

Duties and Responsibilities of Public Utilities

Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, telegraph, or telephone service, produced, transmitted, delivered, or furnished, or for any service to be rendered as or in connection with any public utility, shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

Every public utility is required to keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

No public utility is to keep any other books, accounts, papers, or records of the business transacted than those prescribed or approved by the commission. No books, accounts, papers, or records, required by the commission to be kept within the state, shall at any time be removed from the state, except upon such conditions as may be prescribed by the commission.

Public utilities are to close their accounts annually on either June 30 or December 31. A balance sheet and full annual reports of the business of such utility are to be made to the public service commission not later than the 15th day of the first following September or not later than the 15th day of March of the first following year, depending whether the books are closed on June 30 or December 31 respectively.

The books, accounts, records, and papers of any public utility may be examined by the commission for the purposes of determining their correctness and whether they are being kept in accordance with the rules and system prescribed by the commission. Refusal by the public utility for these examinations shall be subject to fine and penalty.

Every public utility shall file with the commission schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established, and which are in force at the time, for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. Rules and regulations affecting the rates charged or to be charged for any service shall be filed with and as a part of such schedule.

It is unlawful for any public utility to charge a greater or less compensation for any service performed than is specified in the printed schedules. It is also unlawful for any public utility to grant any rebate, concession or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, etc.

The right of every public utility furnishing electric or gas service in the state of Montana to issue, assume or guarantee securities and to create liens on its property situated in the state of Montana is subjected to the regulation and supervision of the public service commission. Stocks and stock certificates may be issued by a public utility as set forth in Section 70-117.1.

Application is made by the public utility to the commission authorizing the proposed issue, assumption or guarantee of securities and the application of the proceeds therefrom. Short term obligations are issuable without commission approval.

Duties and Responsibilities of Railroad Commission

The commission may investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. The commission may avail itself of all information contained in the assessment rolls of various counties and the public records of the various

counties and the public records of the various branches of the state government and may, at any time of its own initiative, make a revaluation of such property.

The public service commission, in regulating rates should, under this section, ascertain the present fair value of the utility; rates must be fair and reasonable, as well as the return on its investment for services rendered; the commission cannot under the law fix rates so low as to result in taking of property without just compensation to the owner. No particular method is required but it must be done under proper legal procedure and restrictions. (Tobacco River Power Co. v. Public Service Commission)

The commission is to make and publish annual reports for each calendar year showing its proceedings. All reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission shall be open to the public, except that when the commission deems it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than ninety days after the acquisition of such facts or information.

The commission shall ascertain and prescribe for each kind of public utility suitable and convenient commercial units of product or service; fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered; and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof. The commission has the power to enter upon any premises occupied by any public utility for the purpose of making these examinations and tests.

The commission may prescribe classifications of the service of all public utilities, and such classifications may take into account the quantity used, the time when used, and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls, and charges to such classifications.

The commission has the power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits and investigations, and to adopt and publish reasonable and proper rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of public utilities, and other parties before it. All hearings shall be open to the public.

Authority is given to the commission to inquire into and investigate the management of all public utilities. The commission or any commissioner or any person or persons employed by the commission for that purpose, shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility, and to examine, under oath, any officer, agent, or employee of such public utility in relation to its business and affairs.

All applications to the commission hereunder shall be disposed of promptly, and in any event 30 days after petition is filed with the commission unless, for good cause, it is necessary to continue consideration thereof for a longer period. Whenever such application is continued beyond said 30-day period the commission shall enter its order effecting such continuance and stating fully therein the facts requiring continuance for a designated period of time.

All securities issued, assumed or guaranteed without the approval by the commission shall be void except short term obligations as provided in Section 70-117.3.

The commission is authorized to employ an engineer at a salary of \$4,000 per annum, also examiners, experts, clerks, accountants, or other assistants as it may deem necessary, at such rates of compensation as it may determine upon;

and it is provided that the secretary of the public service commission shall receive an annual salary of \$600, such salary to be in addition to the salary now provided by law to be paid to the secretary of the board of railroad commissioners.

The commission shall proceed with an investigation and hearing upon a complaint made against any public utility as set forth in Section 70-119. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid; but no fees or mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

As provided in Section 70-121, the commission has the power to fix and order substituted rates, tolls, charges, etc. if, upon a hearing and due investigation, the rates, tolls, charges, etc. are found to be unjust, unreasonable or unjustly discriminatory, or to be preferential or otherwise in violation of this act.

A full and complete record of all proceedings before the commission or its representatives on any formal investigation and all testimony, is to be kept by the commission.

The commission shall inquire into any neglect or violation of the laws of this state by any such public utility as hereinbefore defined, and shall have the power, and it shall be its duty, to enforce the provisions of this act, and report all violations thereof to the attorney general; upon the request of the commission it shall be the duty of the attorney general, or the prosecuting attorney of the proper, or any county, to aid in any investigations, prosecutions, hearing, or trial had under the provisions of this act and to institute and prosecute all necessary actions or proceedings for the enforcement of this act (Section 70-126).

All rates, fares, charges, classifications, and joint rates fixed by the commission shall be enforced; all regulations, practices, and service, prescribed by the commission, shall be enforced and action shall be brought for that purpose.

As provided in Section 70-128, any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, etc., or any order fixing any regulations, practices, or services, may within ninety days commence an action in the district court of the proper county.

The commission shall investigate and make inquiry into every accident occurring in the operation of any public utility in the state, resulting in death or injury to any person requiring the attention of a physician or surgeon. It is the duty of the public utility to report the occurrence of such an accident to the commission.

CHAPTER III

METHODOLOGY OF THE STUDY

General

The subcommittee gave much consideration to the present makeup of the commission, not as individuals but as to mechanics. There was consideration as to whether the present method of election should be retained or the commissioners elected from districts, rather than from the state at large, the theory being that the electors would better know the candidates in districts. Also considered was whether it would be better to have all of the terms of the commissioners run concurrently, so that when hearings on rate cases were before the commission, all commissioners would be faced with the same considerations with respect to reelection, when they made their decisions. Also considered was whether it would be better to have a single commissioner, rather than three, and to have that commissioner appointed to serve at the pleasure of the governor who would appoint him.

Members of the Railroad Commission and staff met with the subcommittee to discuss the various areas of jurisdiction and practices before the commission. Mr. Johnson, auditor of the commission, explained hearing procedures, expert witnesses hired by the commission and factors considered by the commission in its rate-making processes. The commission and its staff were most cooperative, affording all data sought by the subcommittee.

It was determined by the subcommittee that there is no fixed rate of return or rate base used by the commission, but that this is determined from many factors in evidence at each hearing.

Requests for an increase in utility rates are studied by the commission, and, in the case of the larger utilities, a split hearing procedure is adopted whereby the utility is allowed to present its case in chief including all testimony and exhibits. A second half of the hearing is set at a later date, and the commission and protestants cross-examine the utility witnesses and the commission and protestants then introduce evidence so that there is a complete record for consideration. The hearings are set upon written notice and may be held at locations decided upon by the commission.

The various rate bases were discussed, including original cost depreciated, reproduction cost new and reproduction cost new less depreciation, and the method called "fair value" which is used in Montana. Likewise, the percentage rate of return of the various utilities was discussed.

The commission may use original cost or reproduction cost new, or either and both of these methods, less depreciation, assessment lists, the prudent investment theory, public records mentioned in Section 70-106, R.C.M., 1947, and opinions of value in the determination of a utility's value. Any and all of these methods in concert are available to the commission so long as a fair value can be arrived upon, which may be the base for fair and reasonable rates for customers and to provide a fair rate of return to the utility upon its investment. The fact that the Federal Power Commission and a number of states use original cost less depreciation as a basis for valuation would indicate that, in those states, reproduction new less depreciation is not a dominant method.

Montana-Dakota Utility Hearings

In order that the subcommittee would be thoroughly informed concerning the method of conducting rate hearings, members of the subcommittee attended hearings on the pending gas rate increases sought by the Montana-Dakota Utilities at Billings, Miles City and Wolf Point.

The subcommittee members participated in the hearings to the extent of asking questions of witnesses relative to various aspects of their testimony, and probably adduced some potential information which could aid the commission in coming to a conclusion as to whether the rates should or should not be increased.

The subcommittee members, at the Billings hearing, met and discussed with members of the North Dakota commission, specifically how such hearings were conducted in North Dakota. It was learned that North Dakota has a utility valuation fund which is a separate appropriation (presently \$20,000). When a utility requests a rate increase, the travel, lodging, etc. spent by the commission when they inspect the utility's books is charged to the utility valuation fund and then the utility is billed for this amount. If it is necessary for the commission to hire an outside consultant or an attorney for the hearing, this cost is also billed to the utility. Travel expenses of commission members and staff during the hearing are not charged to the utility -- only when they inspect the books prior to the hearing.

In Montana, this practice is not followed and the commission has complained in the past that it is inadequately financed for such purposes, the finances coming from legislative appropriations. Private financing has been resorted to in some cases but is woefully inadequate.

Public Utility Hearing

All of the public utilities in the state were invited to attend a subcommittee meeting to provide the subcommittee with information which might be helpful in its study. The meeting was well attended, many statements were offered, and many questions were propounded. In general, the utility people were satisfied with the services of the commission and staff and did not feel that any legislation was required. The only adverse comments made were: (1) the failure of the commission to allow the increases requested; (2) delay in rendering a decision after the hearing; and (3) that the commission had an excellent and qualified staff but there is a need for additional commission personnel to handle the work load.

At the utility hearing the representatives of the utilities all agreed that the reproduction cost new less depreciation should be used. Study by the subcommittee adduced that practice in other states varies in this regard and that many states use original cost depreciated.

Pipelines

The hearing concerning pipelines elicited considerable information which could lead to regulatory legislation and possibly development of revenue for the State of Montana. Other data from federal sources indicates the federal government does not regulate the sale of gas traveling through pipelines in Montana.

Motor Transportation

At the March 14 hearing, representatives of the motor transportation industry appeared to testify concerning their views of the administration of the Railroad and Public Service Commission. Mr. Leonard Eckel testified that the certificated and regulated motor carriers paid \$721,139.93 to the commission in the year 1969 for gross receipt taxes of which approximately \$200,000 was for M.R.C. plates. He pointed out that the motor carriers are the only persons paying the Railroad Commission any fees except for the annual reports filed by the public utilities at a fee of \$5.00. He provided the following data showing what the regulated trucking industry paid the state in 1969: G.V.W., \$6,250,000; Diesel Tax, \$4,000,000; Gasoline Tax, \$8,000,000; Gross Receipt Tax, \$721,000.

Railroads

Transportation representatives of the railroads appeared and discussed the regulation of the railroads by the commission noting that only intrastate matters were involved. There was some information presented concerning intrastate rates, abolition of services, special rates for unit trains hauling coal to Minnesota and Billings out of Coalstrip, Montana strip mines. The railroad representatives were almost enthusiastic about the regulations of the commission.

The subcommittee vice-chairman suggested that the railroad representatives submit memoranda relative to any recommended legislation. The one thing noted was that the railroads wanted earlier decisions on rate increases.

Representatives of both the livestock transportation industry and the logging industry (truckers) testified in detail that their operations were hampered by non-regulation and all of those present at the hearing advocated legislation which would place their trucking under regulation by the commission.

Assessments of Railroads

At the request of the subcommittee, Mr. Vern Miller, Director of Administration and Secretary of the State Board of Equalization, appeared before the subcommittee to explain the assessment procedure for railroads and supplied the following information to the subcommittee:

Statement by Mr. Vern Miller

The form used by railroads for assessment purposes includes information on how much of the railroad is in the state, how the allocation will be made to school districts in which it is located, etc. This report contains identical information to that which is reported by the railroads to the ICC. Assessments can be and have been made directly out of federal reports to arrive at the total value of the railroad. The Board of Equalization also gets copies of their reports to stockholders.

There are three separate approaches used in arriving at the total valuation: (1) market value of stock and debt; (2) capitalization of net earnings; and (3) cost of physical plant. Generally all states use these three approaches to value. Different states may place a different weight on an approach than another state.

Each of the above approaches requires a certain amount of refinement. Some railroads have a great deal of non-operating properties such as timber lands, mining lands, grazing lands, etc., that are not being assessed in the railroad's valuation. The State Board of Equalization assesses only operating property of railroads. It is necessary to weed out from stock and debt and income those figures that represent fair value of non-operative value.

The 1953 assessments of railroads totaled \$168 million while the 1968 assessments dropped to \$124 million. It was explained that the 1953 value of railroads was a much higher percentage of the market value than lands of rural and urban property. The 1954-56 sales ratio study showed that properties of counties, rural and urban, were assessed between 30 to 35% of the market value. Montana's statutes called for 100%. The Board of Equalization was at a much higher percentage and suggested to county assessors, at that time, that they raise their percentages.

The state may lose approximately \$11 million on assessed valuation of the roads this year. One of the reasons is the net railway operating income. One railroad, for example, over a five-year

period had a net railway operating income of approximately \$18 million, \$19 million, \$11 million, \$7 million and this year their income was \$10 million in the red. Another reason is the stock market showed a sharp decline. A third reason is that the physical plant or cost declined.

The railroads just do not have the income to put back into any equipment except for maintenance. Few purchases of any equipment were made as their income went down. The income of one specific railroad was as follows: \$25 million, \$33 million, \$32 million, \$15 million, \$20 million, and now is operating in the red in the first few months of 1970. This is one of the better railroads.

In 1959 the State Board of Equalization met with representatives of all of the public utilities and railroads for the purpose of keeping the utilities and railroads out of court and to agree with the State Board that they would accept a gradual reduction over a five-year period of what the Board termed the equalized value while they were trying to bring local assessments up. They were aiming at that time at 40%. The Board tried to get county assessors to raise their value to 40%. If utilities were assessed 15 percentage points high, then it meant 3 percentage points per year. Some were assessed at 90% that year. The only way that the Board has been able to bring this equalization factor down is in those utilities where there is enough growth to offset any loss.

The western states successfully defeated Senate Bill No. 927 which would have tied the hands of the states. The western states have been able to get several amendments adopted in Senate Bill No. 2289, now in the House of Representatives, which make it more palatable but it will cause a loss to Montana.

The amendments that were incorporated into S.B. No. 2289 are as follows: (1) special type properties will be removed from their base. This will include agricultural and timber lands as well as church or other exempt properties; (2) utilities cannot use the federal law until the expiration of a three-year period; (3) there will be a 5% deviation allowed on the percentage set at the federal level; and (4) the Board will be the assessing jurisdiction rather than having to equalize the properties on a school district basis.

The law states that no interstate property shall have a tax rate higher than the rate of locally assessed property. In Montana, we are in bad shape as we do not have our utilities and local assessments at the same rate. Oregon brought everything down to 20% and then raised it all to 100%. Montana's railroads are presently at 50%; local property is much lower. Land was being assessed between 19 and 21% of market value while our statutes require that this property shall be 100% of market value. In addition, by statute the taxable value of railroads and utilities allocation is at 40% while other properties by statute have a taxable valuation of less than 40%. Land is at 30%; automobiles and machinery at 20%; etc. No other property has a taxable value as high as the utilities except net proceeds of mines and reserve rights of entry.

Our locally assessed property is at approximately 37.06% of market value. This includes all of our local properties together statewide. The net proceeds of mines is at 100%; land is at 19%; cities and towns are at 30%; livestock at 30% -- an average of approximately 37.06%.

Railroads are assessed at 47.40%; utilities at 48.06%; pipelines at 44.19%. Under S.B. No. 2289, Montana could lose \$57.3 million.

The State Board definitely considers proceeds and losses in determining the taxable value of railroad properties. The market value is what they are looking for.

Railroad timber land is assessed locally just like any other private party's land. Oil land is assessed on a lease basis.

(This concludes Mr. Miller's statement.)

CHAPTER IV

COMPARISON WITH OTHER STATES

Term and Compensation of Commissioners

The three Montana commissioners are selected by election for a term of six years. At present, one of the commissioners receives \$10,500 per annum and the other two commissioners receive \$10,000 per annum.¹

The number of commissioners, their terms of office, their compensation and the method of their selection are shown in Table 1 on page 14.

Service on 36 of the state commissions is by appointment. In most cases, appointment is made by the Governor with the approval of the legislature. In the District of Columbia appointment is made by the President and confirmed by the Senate. In Rhode Island the appointment of the Public Utility Administrator is made by the Director of the Department of Business Regulations, with the approval of the Governor. The Division of Public Utilities succeeds the former Public Utilities Commission, and retains all former authority of same. In New Mexico, commissioners are appointed to the Public Service Commission, which regulates electric and gas utilities, while commissioners of the State Corporation Commission, which regulates telephone utilities, are elected. In 15 jurisdictions the offices are filled by popular election and in two, South Carolina and Virginia, election is by the legislature.

The number of commissioners in the several jurisdictions ranges from one in Oregon and Rhode Island to seven in Massachusetts and South Carolina. Thirty-nine of the state commissions have three members and ten have five members each.

The commissioners' terms of office range from 3 years in the District of Columbia to 10 years in New York and Pennsylvania. In Rhode Island the term is at the pleasure of the Governor.

Terms of 6 years which occur in 33 jurisdictions are the most popular followed by 4-year terms which occur in 11 jurisdictions.

As shown on Table 1, page 14, four states pay \$10,000 or less per annum to their commissioners; seventeen states pay \$10,001 to \$15,000 per annum; eighteen states pay \$15,001 to \$20,000; and eleven states pay over \$20,000.

The thirteen western states compensate their commissioners as follows, listed in a decreasing order:

<u>State</u>	<u>Chairman</u>	<u>Commissioners</u>
California	\$ 25,500	\$ 25,000
Washington	20,000	14,500
Oregon	19,680	- - -
Colorado	18,000	18,000
Nevada	16,000	14,400
Idaho	14,500	14,500
Arizona	13,000	13,000
Wyoming	13,000	12,500
New Mexico	12,500	12,500
Utah	11,000	10,000
Montana	10,500	10,500 ¹
Alaska	Per diem and expenses only.	
Hawaii	\$10 per day when engaged in PUC work, not to exceed \$1,000 per annum.	

¹ The commissioner who takes office January 1, 1971 will receive \$11,500 per annum.

TABLE 1
TERM AND COMPENSATION OF COMMISSIONERS*

State	Members selected by	Number of commissioners	Term of office (years)	Compensation per annum	
				Chairman or president	Commissioner
FPC.....	Appointment.....	5	5	28,500	27,000
FCC.....	do.....	7	7	28,500	27,000
Alabama.....	Election.....	3	4	18,500	18,000
Alaska.....	Appointment.....	3	6	⁽¹⁾	⁽¹⁾
Arizona.....	Election.....	3	6	13,000	13,000
Arkansas.....	Appointment.....	3	6	15,000	15,000
California.....	do.....	6	6	25,500	25,000
Colorado.....	do.....	3	6	18,000	18,000
Connecticut.....	do.....	3	6	² 19,780	² 16,460
Delaware.....	do.....	3	6	4,500	4,500
District of Columbia.....	do.....	3	3	25,435	25,435
Florida.....	Election.....	3	4	18,000	18,000
Georgia.....	do.....	6	6	23,500	23,500
Hawaii.....	Appointment.....	5	4	⁽⁴⁾	⁽⁴⁾
Idaho.....	do.....	3	6	14,500	14,500
Illinois.....	do.....	5	5	25,000	23,000
Indiana.....	do.....	3	4	22,200	20,160
Iowa.....	do.....	3	6	13,000	13,000
Kansas.....	do.....	3	4	15,000	14,500
Kentucky.....	do.....	3	4	10,000	9,000
Louisiana.....	Election.....	3	6	12,500	12,500
Maine.....	Appointment.....	3	7	13,650	12,000
Maryland.....	do.....	3	6	9,000	8,000
Massachusetts.....	do.....	7	7	15,000	11,500
Michigan.....	do.....	3	6	19,000	18,000
Minnesota ⁵	Election ¹⁷	3	¹⁷ 6	17,000	17,000
Mississippi.....	do.....	3	4	15,000	15,000
Missouri.....	Appointment.....	5	6	20,000	20,000
Montana.....	Election.....	3	6	10,500	10,500
Nebraska ⁵	do.....	5	6	10,000	10,000
Nevada.....	Appointment.....	3	4	16,000	14,400
New Hampshire.....	do.....	3	6	15,500	15,000
New Jersey.....	do.....	3	6	22,000	18,000
New Mexico.....	⁽⁹⁾	3	6	⁷ 12,500	⁷ 12,500
New York.....	Appointment.....	⁸ 5	10	32,265	29,160
North Carolina.....	do.....	5	8	21,000	20,000
North Dakota.....	Election.....	3	6	11,000	11,000
Ohio.....	Appointment.....	3	6	22,880	22,880
Oklahoma.....	Election.....	3	6	12,000	12,000
Oregon.....	Appointment.....	1	4	19,680	-----
Pennsylvania.....	do.....	5	10	20,000	19,000
Puerto Rico.....	do.....	3	4	16,000	14,000
Rhode Island.....	do.....	1	⁽¹⁰⁾	12,000	-----
South Carolina.....	Elected by joint assembly.....	7	4	15,500	15,000
South Dakota ⁴	Election.....	3	6	10,800	10,800
Tennessee.....	do.....	3	6	17,500	17,500
Texas ¹¹	do.....	3	6	26,000	26,000
Utah.....	Appointment.....	3	6	11,000	10,000
Vermont.....	do.....	3	6	16,500	¹² 3,500
Virginia.....	Elected by legislature.....	3	6	22,000	21,400
Virgin Islands ¹³	Appointment.....	5	⁽⁴⁾	None	None
Washington.....	do.....	3	6	20,000	¹⁴ 14,500
West Virginia.....	do.....	3	6	16,000	16,000
Wisconsin.....	do.....	3	6	¹⁵ 17,000	¹⁶ 15,500
Wyoming.....	do.....	3	6	13,000	12,500

¹ Per diem and expenses.

² \$19,780 minimum, \$24,340 maximum.

³ \$16,460 minimum, \$20,420 maximum.

⁴ \$10 per day, when engaged in PUC work, total not to exceed \$1,000 per annum.

⁵ No commission regulation of electric or gas utilities.

⁶ Members of Public Service Commission are appointed. Members of the State Corporation Commission are elected.

⁷ Public Service Commission, \$12,500. State Corporation Commission, \$12,000.

⁸ Regular component is 5. If work requires, number may be increased to 7.

⁹ Staggered 2 and 4 year terms.

¹⁰ Indefinite (at the pleasure of the Governor).

¹¹ No commission regulation of electric or telephone utilities.

¹² Part time.

¹³ Electric facilities owned and operated by the Government and are not regulated by the Commission. No natural gas service in the Virgin Islands other than "bottled gas" which is not regulated by the Commission.

¹⁴ \$14,500 minimum, \$17,500 maximum.

¹⁵ \$17,000 minimum, \$20,500 maximum.

¹⁶ \$15,500 minimum, \$18,000 maximum.

¹⁷ Each of the current commissioners may be elected for one more 6 year term; after that, the commissioners shall be appointed by the Governor with the approval of the Senate.

* "Federal and State Commission Jurisdiction and Regulation," 1967, Federal Power Commission

Present Staff and Work Load

The commission has an eighteen-member staff, including two new ones -- two lawyers, a rate expert, a rate analyst, executive secretary, auditor, a hearings reporter, an electrical inspector, a motor vehicle supervisor, and four fieldmen. The commission had an appropriation in the amount of \$432,714 for the 1967-1969 biennium to regulate over 600 transportation carriers and approximately 200 non-transportation facilities, such as public utilities. The income from controlling trucks and collecting fees during this same biennium was \$1,124,638 -- \$691,924 greater than the entire budget granted by the legislature.

The following table portrays the funding of the commission and the growth of receipts as well as appropriations:

<u>Biennium</u>	<u>Appropriation</u>	<u>Deposited to State Treasury</u>
1969-1971	\$ 520,295	\$ 1,500,000 ²
1967-1969	432,714	1,124,638
1965-1967	380,258	978,581
1963-1965	357,690	871,925
1961-1963	323,303	798,731

Rate-Making Procedures in Other States

In a study of Public Service Commissions in Arizona, Illinois, Maryland, Massachusetts, New Jersey, New York, Rhode Island, Texas, Virginia, Florida, and other states, it was found that the situation of the Montana consumers of utilities is not unique. Like and parallel problems were found in Montana. Records show that utilities spend endless amounts in preparing the rate increase cases, and the consumers were unable to mount forces, and raise finances to rebuff increases.

Various methods of arriving at valuations upon which utility rates may be based are followed in various states. These include reconstruction cost new, reconstruction cost new depreciated, original cost, and original cost depreciated, plus use of assessment valuation, stock market values, prudent investment, etc. In order to further delineate this situation, a table of valuations (Table 2 on page 16) was provided the subcommittee by the Public Service Commission with respect to several Montana utilities, plus a second table (Table 3 on page 17) received from the Montana Board of Equalization showing 1969 assessed valuations which include both gas and electric values in the case of Montana-Dakota Utilities and Montana Power Company.

Table 4 on page 18 provides a graphic picture of regulatory functions of all of the states' public utility commissions which makes it possible for the reader to compare the range of operations.

² Estimate for the biennium; actual eleven-month amount is \$706,436.

TABLE 2
MONTANA UTILITY VALUATIONS

MONTANA-DAKOTA, GAS - 1968

RCN*	\$ 64,067,540
RCND**	55,648,962
OC***	41,366,839
OCD****	27,507,705
ASSESSED VALUATION	17,558,894

MONTANA-DAKOTA, ELECTRIC - 1958

TRENDED ORIGINAL COST DEPRECIATED	\$ 18,573,908
OCD	12,953,856
ASSESSED VALUATION	4,882,838

MONTANA POWER, GAS - 1967

RCN	\$ 189,659,610
RCND	134,638,291
OC	104,849,312
OCD	69,605,829
ASSESSED VALUATION	42,663,135

MONTANA POWER, ELECTRIC - 1967

RCN	\$ 397,223,029
RCND	325,757,576
OC	201,716,413
OCD	159,003,717
ASSESSED VALUATION	94,891,915

MT. STATES TELEPHONE CO. - 1967

RCN	\$ 115,850,000
RCND	96,851,000
OC	99,023,000
OCD	77,527,000
ASSESSED VALUATION	37,993,962

* Reproduction Cost New
 ** Reproduction Cost New Depreciated
 *** Original Cost
 **** Original Cost Depreciated

TABLE 3
1969 ASSESSED VALUES

Montana-Dakota Utilities	\$ 26,224,932
Montana Power Company	139,128,587
Pacific Power and Light	12,516,387

TABLE 4

REGULATORY FUNCTIONS OF STATE PUBLIC UTILITY COMMISSIONS*

State or other jurisdiction	Commissions have jurisdiction over rates of privately owned utilities rendering the following services											Commissions regulate municipally owned public utilities as to				
	Electric light and power	Manufactured gas	Natural gas	Street railways	Interurban railways	Motor buses	Motor trucks	Water	Telephone	Telegraph	Oil pipe line	Gas pipe line	Accounting	Rates and rate schedules	Issuance of securities	Service to consumers
Alabama.....	(a)	(b)	★	(b)	(b)	(c)	(c)	★	★	★	..	..	..	..	..	..
Alaska.....	★	★	★	(b,d)	(b,d)	(d)	(d)	★	★	★	★	..	..	..	..	..
Arizona.....	★	★	★	★	★	★	★	★	★	★	★	★	..	..	..	..
Arkansas.....	(a)	★	★	(c)	(c)	(c)	(c)	★	★	★	(c)	★	..	..	★	..
California.....	★	★	★	★	★	★	★	★	★	★	★	★	..	..	..	..
Colorado.....	★	★	★	★	★	★	★	★	★	★	★	★	(f)	(f)	(f)	(f)
Connecticut.....	★	★	★	(b)	(b)	★	★	★	★	★	★	★	★	..	..	..
Delaware.....	★	★	★	★	★	★	★	★	★	★	..	..	..	..	..	..
Florida.....	★	★	★	★	★	★	★	(g)	★	★	..	..	..	..	..	..
Georgia.....	(a)	★	★	★	★	★	★	..	★	★	..	★	..	..	..	..
Hawaii.....	★	★	..	..	..	★	★	★	★	..	..	..	..	..	..	..
Idaho.....	(a)	★	★	★	★	★	★	★	★	..	(h)	..	..	..	..	..
Illinois.....	★	(b)	★	(b)	★	★	★	★	★	★	(h)	(i)	..	..	..	..
Indiana.....	★	★	★	★	★	★	★	★	★	★	..	..	(f)	★	★	★
Iowa.....	★	★	★	..	★	★	★	★	★	★	..	..	..	..	..	★
Kansas.....	★	★	★	★	★	★	★	★	★	★	★	★	..	..	..	..
Kentucky.....	★	★	★	..	..	(k)	(k)	★	★	★	★	★	..	..	..	..
Louisiana.....	★	★	★	★	★	★	★	★	★	★	(h)	(i)	..	..	..	..
Maine.....	★	★	★	(b)	(b)	★	★	★	★	★	..	..	★	★	★	★
Maryland.....	★	★	★	(b)	(b)	★	★	★	★	★	..	..	(l)	(l)	(l)	(l)
Massachusetts.....	★	★	★	★	★	★	★	★	★	★	..	..	★	..	..	..
Michigan.....	★	★	★	(b)	(b)	★	★	★	★	..	..	..	★	..	..	..
Minnesota.....	..	..	..	(b)	(b)	★	★	..	★	..	..	..	★	★	★	★
Mississippi.....	(a)	★	★	..	★	★	★	★	★	★	..	(i)	..	..	..	..
Missouri.....	(a)	★	★	★	★	★	★	★	★	★	..	★	..	..	..	..
Montana.....	(a)	★	..	★	★	★	★	..	(a)	★	★	..	★	★	(m)	★
Nebraska.....	(n)	..	..	★	★	★	★	(n)	★	★	(h)	(b)	..	..	..	..
Nevada.....	★	..	★	(b)	(b)	★	★	★	★	★	★	★	..	..	..	..
New Hampshire.....	★	★	★	★	★	★	★	★	★	★	★	★	(f)	(f)	(f)	(f)
New Jersey.....	★	★	★	★	★	★	..	★	★	★	★	★	(o)	(f)	★	(f)
New Mexico.....	★	★	★	(p)	(p)	(p)	★	★	★	★	(p)	(p)	..	..	(q)	..
New York.....	★	★	★	★	★	★	★	(r)	★	★	★	★	(s)	(s)	..	(s)
North Carolina.....	(a)	★	★	..	..	★	★	★	(a)	★	★	★	..	..	..	..
North Dakota.....	(a)	★	★	..	★	★	★	★	★	★	★	★	..	..	..	..
Ohio.....	(t)	(t)	(t)	..	(c)	(c)	(c)	(t)	★	..	★	★	..	..	..	..
Oklahoma.....	(a)	..	★	(b)	★	★	★	★	★	★	★	★	..	..	..	..
Oregon.....	★	★	★	★	★	★	★	★	★	★	★	★	..	..	..	..
Pennsylvania.....	★	★	★	★	★	★	★	★	★	★	★	★	(f)	(f)	..	(f)
Rhode Island.....	★	★	★	★	★	★	★	★	★	★	..	★	(s)	(s)	..	(s)
South Carolina.....	★	★	★	★	★	★	★	★	★	★	..	★	..	..	..	..
South Dakota.....	..	..	..	..	★	★	★	..	★	★	..	..	(u)	(u)	..	(u)
Tennessee.....	★	★	(v)	..	★	★	★	★	★	★	..	..	..	..	..	..
Texas.....	..	★	★	..	★	★	★	..	..	..	★	★	..	..	..	..
Utah.....	★	★	★	★	★	★	★	★	★	★	..	★	..	..	..	..
Vermont.....	★	★	★	★	★	★	★	★	★	★	..	★	(w)	(w)	(a)	(w)
Virginia.....	★	★	★	★	★	★	★	★	★	★	..	★	..	..	..	..
Washington.....	★	★	★	(b)	(b)	★	★	★	★	★	★	(b)	..	..	..	..
West Virginia.....	★	★	★	(b)	(b)	★	★	★	★	★	★	★	★	★	..	★
Wisconsin.....	★	★	★	(b)	(b)	★	★	★	★	★	..	★	..	..	..	..
Wyoming.....	★	★	★	(b)	(b)	★	★	★	★	★	★	★	(f)	(f)	..	(f)
Puerto Rico.....	..	★	..	(b)	(b)	★	★	..	★	..	★	..	(x)	(x)	(x)	(x)

★ Signifies jurisdiction.
 .. Signifies no jurisdiction.
 (a) Authority does not extend to rural electrical cooperative units except for service areas in North Carolina.
 (b) Statute confers jurisdiction but no utility now renders this service.
 (c) Only operations outside of corporate limits not contiguous to Ohio; exemption from regulation applies only if transportation line is wholly within a municipality and one contiguous municipality.
 (d) Under Transportation Commission jurisdiction.
 (e) Under Commerce Commission jurisdiction.
 (f) Regulated only as to operations outside limits of municipality.
 (g) Limited jurisdiction over water and sewer utilities.
 (h) If common carrier.
 (i) Limited jurisdiction over natural gas pipe lines.
 (j) Commission has prescribed standard classification of accounts. State Board of Accounts is responsible for annual audit and system of accounting used.

(k) Under Department of Motor Transportation jurisdiction.
 (l) Limited to gas, electricity and common carriers.
 (m) Limited to gas and electricity.
 (n) All publicly or municipally owned and exempt from jurisdiction by statute.
 (o) Only annual report required.
 (p) Under Corporation Commission jurisdiction.
 (q) Initial losses and refunding.
 (r) Authority does not extend to private water utilities whose plant valuation is \$30,000 or less.
 (s) Certain jurisdiction over some types of municipally owned utilities.
 (t) Upon appeal within corporate limits; original jurisdiction in unincorporated areas.
 (u) Telephone only.
 (v) Local distribution only.
 (w) Electric only.
 (x) Limited jurisdiction over school buses and one electric power plant.

CHAPTER V

FURTHER FINDINGS

Utility Review

(1) It seems utilities keep lining up with more requests for rate increase, citing soaring interest rates, employees' salaries, and cost of equipment. In practically all cases the Railroad Commission granted the rate requests; in a few cases only a portion of the requested rate hike was granted.

(2) In 1968, in one case testimony submitted showed that a power company had spent \$82,000 to pursue one of its rate cases which would be more than one-third of the commission's budget for that year. In another case a power company apparently spent \$300,000 in preparation of one rate case, which was more than an entire yearly budget of the Railroad Commission. In the latter case a consumers counsel was organized, set a hearing, and was able to raise about \$15,000 to pay three lawyers and an expert consultant to contest the request to increase rates of the power company.

(3) A lop-sided industry-oriented approach to utility regulations exists. This is evident at rate hearings. On one side is the well staffed, fully informed utility team of attorneys, engineers, accountants, and other experts hired at consumer expense. In the middle is the "neutral" commission and its staff, and on the other side -- a void. The consumers seldom have representation.

(4) Utilities use different figures in evaluating the properties. In most cases the figures used for rate-making are at least three times as high as those used for tax assessment value.

(5) In the sense that taxes are a part of the utility's rate base, the utilities are tax collectors. It is almost impossible for the general public to find out the size and make-up of utilities' rate base upon which earnings, and thus rates, are based.

Montana Railroad Commission Review

(1) The survey shows that the Railroad Commission has an eighteen-member staff including two lawyers, a rate expert, a rate analyst, executive secretary, auditor, a hearing reporter, an electrical inspector, a motor vehicle supervisor and four fieldmen.

During the 1967-1969 biennium the commission had an appropriation in the amount of \$432,714 and regulated over 600 transportation carriers and approximately 200 non-transportation facilities, such as public utilities. The income from controlling trucks and collecting fees during the same biennium was \$1,124,638 -- \$691,924 greater than the entire budget granted by the legislature.

The salary paid the Montana commissioners, \$10,500, was the lowest of the ten western states.

(2) Some very important questions that should be considered are:

- (a) Is the technical staff of the Railroad Commission adequate to perform its vital functions?

Public Service Commission elected members make a maximum of \$11,500 a year (appropriated by 41st legislature) plus actual and necessary travel expenses while away from Helena not to exceed \$45 per day. Only one member of the commission has a B.A. Degree; one has somewhere in the neighborhood

of twenty years of experience which could not be provided by education. Should professional qualifications for the job be established? Should the commission be expanded from its present three members to five or more, elected from districts, or appointed by the Governor, with the approval of the Senate?

There is a terrible shortage of trained, competent accountants, engineers, security analysts and other staff professionals who understand this highly complicated field. Obviously with more money for staff and a realistic pay scale the Railroad Commission could be aggressive, informed and in no time pay for its cost in savings to the rate paying consumer.

- (b) Can the accounting department maintain a thorough and continual audit of the utility records?
- (c) Are salaries of the technical staff in line with private industry to encourage and keep qualified people?
- (d) Is the staff of the commission subservient to utilities or consumers?
- (e) Does the present method of electing the commissioners assure qualified personnel?

There is a general feeling that the Railroad Commission has done a pretty good job, but has been greatly handicapped by lack of finances, professional and technical staff to carry the assigned load. Some thought should be given to authorizing the Railroad Commission to concentrate its full regulatory functions on electric, telephone, gas and water, and transfer present responsibilities from bus companies, truck firms, trucking fees, and railroads to other state agencies, such as a Department of Transportation. It seems the biggest problem is that the Railroad Commission does not have the time and personnel to adequately regulate.

The present laws make the Montana Railroad and Public Service Commission serve in a dual capacity, a situation that is not best for all concerned. The answer seems to be the appointment of a Consumers Counsel created solely to champion the consumer cause through guaranteeing a true adversary proceeding in any significant rate case.

Rate-Making Review

It is difficult to find a major rate setting decision defining policies. Utility experts work mostly for the utility companies, not the public. Training programs in the university community, which should furnish trained leadership for the public in this field, are lacking. In the make-up of utility rate base, the usual practice of allowing utilities to include as operating expenses all rate case costs is generally allowed. Some state commissions use the depreciated original cost rate base; some, as Montana, use the fair value rate base. The latter method seems to produce substantially more revenue than the preceding one.

The Montana Railroad Commission, which is bound by the Tobacco River decision and the statute of fair value rate base conception, has allowed rate returns of 5.33 percent. One large Montana utility has a return of 10.66 percent, on a depreciated original cost rate base and a return of stock equity of 16.4 percent, according to the Federal Power Commission. The rate of return allowed by the commission averages 6 percent. If the Montana commission had used the Federal Power Commission rules in one state rate hearing, testimony shows that the difference would have saved the Montana consumers about 1.2 million dollars per year.

In the matter of ecology and environment, the standards are tough, but since the costs of controlling emissions are put in operating costs or rate base for pollution, the consumers will pay for it.

CHAPTER VI

CONCLUSIONS AND RECOMMENDATIONS

The report of the subcommittee has been accepted by the Legislative Council "without recommendation." Because of the controversial factors involved, the Council was unable to reach a consensus and no proposed legislation has been prepared to supplement the report. The report has been issued so that individual legislators will have access to the information gathered by the subcommittee and its conclusions and recommendations. The conclusions and recommendations which follow are those of the subcommittee.

From the study made of methods of selecting commissioners of the Railroad and Public Service Commission, the subcommittee recommends that commissioners continue to be elected at large, that the number of commissioners remain at three and that no changes be made in the qualifications for commissioner.

The subcommittee recommends that, in the field of regulated industries under the Railroad and Public Service Commission, a separate and independent office be set up for the purpose of representing the public interests for the rates and prices to be charged by utilities or organizations regulated by the Public Service Commission. This office would be known as the "Consumers Counsel."

A further recommendation of the subcommittee is the appointment of a watchdog committee, similar to that established in the 1969 legislative session in conjunction with the Montana Highway Commission. The purpose of this committee would be to examine the operations of the Consumers Counsel and the Railroad and Public Service Commission and then report to the next legislature.

Salaries of commissioners in all of the fifty states were considered at length. After a great deal of research and examination of adjoining states (see page 13), this subcommittee recommends that the salaries for Montana Railroad and Public Service Commissioners be in line with adjoining states, particularly in the state of Wyoming. The Wyoming commissioners receive a salary of \$12,500 per year.

In order to relieve the commissioners of some of their many duties, the subcommittee recommends the hiring of hearing examiners to conduct hearings except in multi-county power, gas, telephone and railroad rate applications, and that the reports and transcripts will then in turn be given to the commissioners for their decisions for the purpose of expediting decisions in regard to cases. The length of time presently required for the commission to make its decision on a rate hearing is the one main complaint submitted to the subcommittee by those regulated under the commission.

The subcommittee discussed the possibility of REA's being added to the jurisdiction of the Railroad and Public Service Commission. If regulation in the future is extended to the REA's, the subcommittee recommends that it come under the Railroad and Public Service Commission and recommends against proliferation of the regulation agency.

Recommendation is made that legislation be prepared for introduction in the Forty-Second Legislative Assembly providing for a utility equalization bill which means that utilities would have the same assessed valuations for tax purposes as for rate-making purposes.

In order to correct the fact that so many delays occur in reaching a decision, the subcommittee recommends that the Railroad and Public Service Commission hear any case before them within ninety days after application and render a decision within ninety days after the hearing.

It was learned by the subcommittee that petroleum products enroute in pipelines across the state are not assessed. The subcommittee recommends the introduction

of a bill which would put the transportation of petroleum products through pipelines through the state of Montana under the one-half percent gross receipts tax like other regulated industries.

During the hearing at which time truckers of the logging and livestock hauling industries testified, they expressed a desire to come under the jurisdiction of the Railroad and Public Service Commission. Because of this, the subcommittee recommends that legislation be prepared and enacted to place the livestock and logging trucking industries under the regulatory powers of the Railroad and Public Service Commission.

The subcommittee also recommends that the legislative auditor determine whether or not the Railroad and Public Service Commission is collecting all fees from regulated industries.

It was the concensus of the subcommittee that more detailed reports concerning general expenses should be provided to the Railroad Commission from utilities. The subcommittee therefore recommends that the utilities be required to itemize all expenses which are shown for general expenses (advertising, miscellaneous, recreational, educational and donations) and such itemized list be provided to the Montana Railroad and Public Service Commission annually.

CHAPTER VII

EXPLANATORY FINDINGS AND COMMENTS

Legislature Interest Review

(1) The operation of the Railroad and Public Service Commission, the regulatory agency charged with protecting the interests of the consumer, has long escaped the careful scrutiny of the legislatures which created them in the first place. If indeed, this is true, maybe it's time for a closer look.

(2) Legislation should deal with two basic consumer's rights; they are the right to be heard and the right to be informed.

(3) Proposed legislation should be designed to provide a greater opportunity for consumers of electricity, gas, water, and telephone services to be heard. The consumer should be represented by effective, able counsel, whose whole purpose is to represent the consumers in proceedings of rate increases.

(4) The expense of carrying a case to the Montana Railroad Commission, the requirement to have expert witnesses, rate expert, the length of time, makes it practically impossible for the individual consumer to follow through to satisfactory conclusion. The creation of a Consumers Counsel would give a separate and alternate channel for protection of the consumer, and would actually strengthen the hands of the present commissioners by forcing utilities to provide information and cooperation or risk exposure to a Consumers Counsel. In some cases in Montana there was not a dollar of tax money available to rebuff massive customer-financed presentation by utilities. The state should provide the technology to see that the information is provided.

(5) There should be an authorized appropriation for constructive operation of a Consumers Counsel. One possible method of raising revenue to support the Consumers Counsel could be the drafting of a bill calling for a tax, 1/10th of 1% of the aggregate annual gross revenue for all state utilities (not including common carriers) whose income is (say) \$300,000 or more. Base rates used by utilities include money spent on preparing and presenting utilities their cases, thus the consumers pay for the cost of rate preparation of the utility. Why not pay for consumer protection?

(6) Legislative inaction is due to ignorance of the language, procedures and even basics of utility regulations, or due to dependence upon the entrenched Railroad Commission officials themselves for evaluation of the Railroad Commission performance. The legislature should appoint a watchdog committee to examine the operations of the Railroad Commission and make further study of rate-making procedures and modern methods of operation of Public Service Commissions in other states, and make periodic recommendations how it might be improved in Montana.

(7) Instances have been noted where utilities have by-passed local or independent producers of gas and crude products in Montana, forcing the independent producer to sell at reduced costs, often discouraging the development of gas, power and crude products. Possibly laws should be passed that would compel utilities to give preference to products produced within the state. Independent producers of gas, power, and crude oil should be able to sell their products to the utilities on pro-rate basis and at a price that would encourage independent production.

(8) There is a difference between the Federal Power Commission and the one large Montana utility figures which have been used in various rate cases. In one case where the Federal Power Commission did not participate and the Montana Railroad Commission operated under its own independent rules rather than the rules of the Federal Power Commission, the Montana commission accepted the power company testimony as valid and the consumers have been charged and must pay for watered-down stock in thousands of dollars.

(9) Testimony reveals that utilities often claim delays in getting their cases heard and the orders issued. Facts reveal that one utility took three years to prepare its case and then objected to a reasonable delay requested by protestants who asked for continuance of the hearing.

(10) The legislature created the Montana Railroad Commission and it is one of the most important, yet most neglected parts of government.

Further Study

(1) It seems that further study and interpretation of the policies and procedures of the public utilities of Montana are needed to determine if Article XV, Section 20 of the Montana Constitution is being broken that expressly prohibits combination for purpose of price fixing.

(2) Presumably public utilities are exempt from Anti-Trust Laws. Since competition is an effective means of regulating rates, services, and prices, it is lacking in utilities, since present state laws seem to guarantee utilities greater returns. The well-being of the public is overlooked and it appears that we may have regulated monopolies in Montana.

Summary

Uneducated in school about utilities and their regulation, the public has learned about the system from the utilities themselves. Thus, through the years, secure from meaningful competition and apparently assured large profits by a cost-plus regulatory system, the public rather timely suggests that this monopoly should be looked into.

The way the regulatory system works, advertising and sales expenses are included in the operating costs of cost-plus utilities. Thus, in effect, utility corporations obtain free advertising through those opposing rate increase pay for these ads. Research and development is treated just like advertising in this regulatory system. Research and development is an operation cost, passed on to the consumers, yet some utilities spend fifty times as much on apparently unburdensome advertising and sales as they do on that burdensome research and development. Again utilities are not taxpayers, they are tax collectors, as the rate base used in all rate-making includes all taxes paid and lumped under operating costs; thus in effect utilities again go tax free. Gifts, grants of all types, are used in building public relations but whose pocketbook gets tapped? It's the consumer's money that is given away. State utility commissions must be a tribune of the people, putting its engineering, its accounting, and its legal resources into the breach for the purpose of getting the facts and doing justice to both the consumers and the investors in public utilities.

Under present conditions the public does not provide for its own defense, or its own offense against utility excesses. Montana legislators must become more fully informed on utility rate-making methods and modernize out-dated laws that control this regulatory procedure. Legislators should realize we pay through rates for utilities' expenses. But no where through either the tax or rate structure, does the public provide itself with counsel or data even remotely comparable to that abundantly available to the utility. The regulators and the regulated exclude from public view the information which it needs in order to make its case.

The consumers do finance expensive rate presentations for the utilities. All large private power companies are fully and well informed, organized, staffed, consulted, advised and prepared. The public is not informed, not organized, not staffed, has no regular counsel, is ill advised, rarely prepared. A Consumers Counsel is designed to provide a greater opportunity for consumers of electricity, gas, and telephone service to be presented before local regulatory agencies and to be informed as to financial and operating policies of the companies providing such services.

The case for the public's right to know about utility matters is stronger than in other consumer areas. The consumer cannot shop for utilities which have been granted special power by the states, boundaries, the right of eminent domain, market monopoly, price fixing.

It seems that superiority of performance of straight utilities lies in the fact that their singularity of energy source carries with it healthy built-in competition which provides far greater benefits to the public than are possible under two-headed electric/gas arrangements.

Legislators should never lose sight that we need strong utilities in the state of Montana to serve the human needs of a modern society. Officials controlling utilities should also recognize the economic plight of our family life in Montana in asking for and securing unreasonable utility rates. Both the consumer and the utilities are subject to laws of "fair and equitable rates" and it should be the duty of all to support a policy of honesty, integrity, and fair plan in establishing utility rates.

If the basic consumer rights in this field are not improved, a younger, less patient generation may alter the system by other methods.

